

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN WHITFIELD, .

Plaintiff,

-against-

CITY OF NEW YORK, officially;  
JOSEPH CARDIERI, individually;  
KATHLEEN SKOWYRA, individually;  
JENNIFER FIELLMAN, ESQ, individually;  
PHOEBE ROSEN, individually;  
DAVID A. HANSELL, individually.

Defendants.  
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**NOTICE OF MOTION TO  
DISMISS PLAINTIFF'S  
FIRST AMENDED  
COMPLAINT**

20-CV-04674 (JMF)

**PLEASE TAKE NOTICE** that upon the accompanying Declaration of Assistant Corporation Counsel Angela M. Wanslow dated December 4, 2020, and the exhibits annexed thereto, the accompanying Local Civil Rule 12.1 Statement dated December 4, 2020, the accompanying Memorandum of Law dated December 4, 2020, and all the papers and proceedings heretofore had herein, Defendants will move this Court, before the Honorable Jesse M. Furman, United States District Judge, Southern District of New York, at the United States Courthouse located at 500 Pearl Street, New York, New York, 10007, on a date and time to be designated by the Court, for an order and judgment, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing Plaintiff's First Amended Complaint in its entirety on the grounds that Plaintiff's claims are barred by the res judicata/collateral estoppel effect of the New York State Supreme Court's August 26, 2020 decision, that the individually named Defendants are entitled to qualified immunity, and that the Complaint otherwise fails to state a plausible claim.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Rules 6.1(b) and 6.4 of the Local Civil Rules of the United States District Court for the Southern District of New York,

Plaintiff's opposition, if any, is due by December 18, 2020, and Defendants' reply papers, if any, are due by December 28, 2020.

**PLEASE TAKE FURTHER NOTICE** that Defendants also request, pursuant to Fed. R. Civ. P.26(c), a stay of discovery pending the outcome of Defendants' motion to dismiss. *See Wills v. Amerada Hess Corp.*, 379 F.3d 32, 41 (2d Cir. 2004) (District courts have "broad discretion to direct and manage the pre-trial discovery process."); *Farzan v. Bridgewater Assocs., LP*, 699 F. App'x 57, 58 (2d Cir. 2017) (finding "ample reason to stay discovery in light of Appellant's history of similar litigation and the low likelihood that the case would move past the motion to dismiss stage"); *D.L. Cromwell Invs., Inc. v. NASD Regulation, Inc.*, 2002 U.S. Dist. LEXIS 11937 (S.D.N.Y. 2002)(discovery stayed pending defendants' motion stay discovery pending determination of motion to dismiss, noting that "there is substantial reason, even at this early stage, to believe that defendant is entirely correct in suggesting that this action is frivolous and, indeed, a bad faith attempt to circumvent prior rulings . . .").

Date: New York, New York  
December 4, 2020

**JAMES E. JOHNSON**  
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City of New York  
Attorney for Defendants  
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By: /s/ Angela M. Wanslow  
Angela M. Wanslow  
Assistant Corporation Counsel

TO: John D. Whitfield (by ECF)  
Plaintiff, pro se

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Defendants.

**NOTICE OF MOTION TO DISMISS THE  
COMPLAINT, LOCAL RULE 12.1 NOTICE  
AND DECLARATION**

***JAMES E. JOHNSON***

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100 Church Street, Room 2-109(b)  
New York, New York 10007-2601*

*Of Counsel: Angela M. Wanslow  
Tel: (212) 356-2441  
Matter No.: 2020-024539*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2020*

*.....  
Attorney for .....*